

Amherst Property, LLC
RZ 2014-PR-004
November 7, 2014
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PROFFERS

Amherst Property, LLC

RZ 2014-PR-004

November 7, 2014

Pursuant to Section 15.2-2303(A) of the Code of Virginia (1950, as amended) and Section 18-204 of the Zoning Ordinance of Fairfax County (1978, as amended), the property owners and Applicant, for themselves and their successors and/or assigns (hereinafter referred to as the "Applicant"), hereby proffer that the development of the parcels under consideration and shown on the Fairfax County tax maps as 29-4 ((7)) 6 and 7B pt. (collectively, the "Property") shall be in accordance with the following conditions if, and only if, Rezoning application 2014-PR-004 (this "Rezoning") is granted.

GENERAL

1. Conceptual Development Plan. The Property shall be developed in substantial conformance with the certain elements of 7915 Jones Branch Drive Conceptual/Final Development Plan ("CDP/FDP/FDP") dated February 3, 2014 and revised through October 2, 2014 prepared by VIKA Virginia, LLC, Design Collective, Inc. and Parker Rodriguez.
2. Proffered CDP Elements. It shall be understood that the proffered elements of the CDP are limited to the grid of streets, general location of the points of access, general location of the building, general mix of uses, minimum and maximum gross floor area ("GFA"), minimum and maximum building heights, build-to-lines, amount and general location and character of urban park land, and general quality and character of the streetscape (the "Proffered Elements"). The Applicant has the option to request a Final Development Plan Amendment ("FDPA") for elements other than the Proffered Elements in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance.
3. Minor Modifications. Minor modifications to the proffered elements of the CDP/FDP may be permitted when necessitated by sound engineering or that may become necessary as part of FDPA approval or final site design or engineering, pursuant to Section 16-403(4) of the Ordinance. The Applicant shall have the flexibility to modify the layout shown on the CDP/FDP without requiring approval of an amended CDP/FDP provided such changes are in substantial conformance with the CDP/FDP as determined by the Zoning Administrator. The building envelope, the number of dwelling units and floors, and the amount of square footage may be adjusted as set forth on the CDP/FDP and in these Proffers, as long as (i.) the building setbacks from the property lines as shown on the CDP/FDP are maintained; (ii.) the minimum and maximum number of residential units and the minimum and maximum building heights comply with those shown on the CDP/FDP; and (iii.) the redevelopment otherwise is in substantial conformance with the CDP/FDP and these Proffers.

4. Declarations/Owners Associations. The Applicant shall be obligated to provide for various proffer and maintenance obligations, including but not limited to, implementation, administration and funding of the TDM program, maintenance of the private streets and sidewalks, streetscapes and furnishings therein, publicly accessible park areas and any private utility systems (the "Obligations"). Should, in the future, the Property become part of a larger coordinated development with more than a single building, the Applicant shall cooperate with the other relevant building(s) in the recordation of an umbrella owners association ("UOA") or the equivalent in the form of one or more reciprocal easement and/or joint maintenance and/or joint development agreements, and other governance documents as necessary (collectively referred to as "UOA or equivalent") to provide for the implementation and administration of the Obligations. Upon request from the owner(s) of the larger coordinated development, the Applicant shall coordinate and cooperate in the submission of such governance documents to the Office of the County Attorney to ensure they provide for the various proffers and maintenance obligations not otherwise covered by separate agreement with Fairfax County and/or the Virginia Department of Transportation ("VDOT"). Said UOA or equivalent may be expanded to include other nearby properties. Prior to such time as a UOA or the equivalent is created, the Applicant shall be responsible for the implementation and administration of the Obligations.

PROPOSED DEVELOPMENT

5. Proposed Development. The minimum gross floor area ("GFA") to be constructed on the Property is 295,000 square feet and the maximum GFA permitted on the Property is 450,000 square feet (the "Proposed Development"). The primary use on the Property shall be residential. Non-Residential uses as identified in the development tabulations on Sheet C-2A of the CDP/FDP (the "Development Tabulations") may include any non-residential use permitted in the PTC District, as limited by Section 6-505 "use limitations," or uses accessory to the primary use. Such Non-Residential uses may include, but not be limited to, ATMs, business service and supply service establishments, quick service food stores, fast food restaurants, community uses, health clubs and similar commercial recreation uses, personal service establishments, professional offices, repair service establishments, retail sales establishments, financial institutions, eating establishments, educational and tutoring facilities, schools of special education, quasi-public uses, garment cleaning establishments and similar uses, and may be provided at the Applicant's sole discretion in areas shown on the CDP/FDP.

Uses allowed by special exception or special permit in the PTC District may be authorized through a separate special exception or special permit process without the need for a PCA or CDP/FDPA if layout is in substantial conformance with the CDP/FDP as determined by the Zoning Administrator.

6. Final Development Plan Amendments. Any FDPA approved for the Property shall establish the range of GFA, range in the number of dwelling units and mix of uses for the building within the limits established by these Proffers and the CDP/FDP. The specific GFA and number of dwelling units for the building shall be established at final site plan.

Should, in the future, the Property become part of a larger coordinated development with more than a single building, the Applicant shall provide with each FDP and site plan a tabulation listing of all existing buildings to remain and proposed buildings, along with the GFA, uses, final building heights, and parking approved on the CDP, FDP and site plan as may be applicable.

In addition, the following information shall be provided with each subsequent FDPA filed on the Property, subject to modification with concurrence from the Department of Planning and Zoning ("DPZ") based on the relevance of the item to the specific FDPA request.

- A. Tree Canopy Calculations. A tabulation indicating the tree canopy calculations of the Property.
- B. TDM Supplement. A copy of the previous TDM Annual Report, if available, to determine progress toward attaining TDM goals and any planned modifications to the TDM program.
- C. Functional Drawings/Sight Distance. Functional drawings to include proposed right-of-way lines associated with public streets; vehicular sight distance lines at all intersections within, and adjacent to, the FDPA area overlaid on the Landscape Plan; and details with respect to utilities and/or vegetation conflicts with building entrances and/or intersections as presented on the CDP.
- D. Utilities. Approximate location of existing and proposed utilities to serve the area of the FDPA including the location of the any utility vaults and stormwater management facilities overlaid on the Landscape Plan.
- E. Proposed Uses. A list of proposed uses and demonstration of how such uses meet the applicable "Use Limitations" of Section 6-505 of the Ordinance.
- F. Architectural Elements. Specific information on architectural elements, build-to lines, and building heights as provided in Proffers 10, 12 and 15.
- G. Streetscape. A graphic depiction of, and any adjustments to, the activated streetscape elements as provided in Proffer 13.
- H. Garage/Loading and Service Area Treatments. Proposed parking garage façade designs and refined loading and service area designs and treatments as provided in Proffers 13.
- I. Landscaping and Streetscape Furnishings. Detailed landscape plans as provided in Proffer 20 and submission of a "Streetscape Furnishing and Materials Plan" as provided in Proffer 21.
- J. Parks and Recreation. For on-site parks and active recreation facilities, depiction of special amenity features as provided in Proffer 43.

- K. Provisions for Bicycles. Bicycle parking and storage as provided in Proffer 33.
- L. Parking Spaces. Refinement of the number of parking spaces as provided in Proffer 36.
- M. Stormwater Management. Identification of the location and preliminary design of the stormwater management facilities including the access points to underground vaults as provided in Proffer 48.

Should, in the future, the Property become part of a larger coordinated development with more than a single building, the Applicant shall provide a tabulation indicating the development status of all property subject to the larger coordinated development with each FDPA and site plan submitted for the Property. The tabulation shall include a listing of all existing buildings to remain and proposed buildings, along with the GFA, uses, final building heights, and parking approved on the CDP, FDP and site plan as may be applicable and shall be updated with each subsequent FDP and site plan approved for the larger coordinated development.

7. Existing Structure and Interim Uses.

- A. Any use that is permitted in the C-3 District, including any special permit and/or special exception uses, may also be permitted as an interim use in the existing structure subject to the use limitations in Section 6-505. Parking for all interim uses shall be provided either in accordance with Article 11 of the Zoning Ordinance as permitted for C-3 uses or as permitted in the PTC District, at the Applicant's sole discretion.
- B. Commercial off-street parking may be provided on an interim basis in existing surface lots on the Property without approval of an FDP. Prior to issuance of a Non-RUP for commercial off-street parking, the Applicant shall provide an operational traffic analysis ("Operational Analysis") of the points of access to the parking lot(s) to the Fairfax County Department of Transportation ("FCDOT") and VDOT for review and approval. Such Operational Analysis shall be limited to an assessment of those driveways serving the parking lot and any proposed access controls.

8. Festivals, Fairs or Similar Activities. The Applicant, or their designee, shall be permitted to operate festivals, fairs or similar activities, including, but not limited to, farmers' markets and food vendors, on the Property, either in the existing surface parking lot or within publicly-accessible privately owned open space shown on the CDP/FDP. The Applicant shall coordinate with the Zoning Administrator regarding the issuance or approval of a temporary special permit as may be required under the Zoning Ordinance, which may include the establishment of an annual permit for continuing or seasonal events.

9. Fire Marshal Evaluation. Changes to the CDP/FDP shall be permitted in response to the review of site plans by the Fire Marshal, including adjustments to tree locations, the

streetscape and perimeter building areas as necessary to allow for required emergency vehicle access, without requiring approval of a PCA, CDPA or FDPA, provided such modifications are made in consultation with DPZ and are in substantial conformance with the CDP/FDP and these Proffers. While trees may be deleted or relocated in response to Fire Marshal requirements, this does not relieve the Applicant from meeting the 10-year tree canopy requirements as shown on the CDP/FDP.

ARCHITECTURAL AND URBAN DESIGN

10. Architectural Design. The architectural treatment of the proposed building shall create a sense of identity and place, and shall create human scale through the use of unifying elements such as materials, textures, color, window treatments, decorative details, lighting, and landscaping as illustrated in the CDP/FDP. The building shall be designed with high quality architecture and building materials as generally shown on Sheet A-4.0 of the CDP/FDP.
11. Bird Friendly Design Elements. In an effort to reduce bird injury and death due to in-flight collisions with buildings, the Applicant shall include one or more bird friendly design elements, as determined by the Applicant, in the design plans of the building on the Property. The bird friendly design elements may include, but not be limited to, the use of color, texture, opacity, fritting, frosting, patterns, louvers, screens, interior window treatments, or ultraviolet materials that are visible to birds, the angling of outside lights, curbing of excessive or unnecessary night-time illumination in commercial buildings, reduction of bird attracting vegetation, the use of decoys, and breaking of glass swaths. Nothing herein shall require the Applicant to obtain a bird-friendly LEED credit. Upon the issuance of a building permit, the provisions of this Proffer shall be deemed satisfied.
12. Build-to-Lines. Build-to-lines ("BTL") have been depicted on the CDP/FDP, to create an urban, pedestrian-oriented environment where the building is located close to the street and pedestrian/streetscape areas are located between the building and the streets. In general, building facades are intended to be configured in such a way as to provide a continuous street wall along this line, but modifications to either side of the BTL shall be permitted provided such are in general conformance with the CDP/FDP and are shown on an approved FDP and/or site plan. Awnings and other architectural canopies attached to the buildings shall not extend beyond the building zone, except as may be shown on the approved FDP. At the time of site plan, the Applicant shall identify possible locations along the street level, outside of the pedestrian sidewalk and landscape amenity panel, for areas for outdoor dining.
13. Activated Streetscapes and Ground Floor Elements. Activated streetscapes shall be provided by designing and constructing streetscapes and exterior facades of ground floor areas adjacent to streets as generally depicted on the CDP/FDP. Modifications and further refinements may be permitted with the approval of future FDPAs. The northeast corner of the building fronting the Jones Branch Drive/Street A intersection shall generally be designed and constructed with a ground floor having a minimum floor to floor height of 16 feet to accommodate Non-Residential uses or residential amenity uses designed to

activate the streetscape. In addition, the Applicant shall provide for a hierarchy of activated streetscapes as delineated on Sheet L0.01 of the CDP/FDP and described below.

A. Jones Branch Drive and Street A. These streets are designated as Primary Pedestrian Corridors and designed to accommodate moderate pedestrian activity and encourage interaction among the uses on the Property. These streets shall generally incorporate the following elements, which may be adjusted with approval of an FDPA:

- (i) Where Non-Residential uses are incorporated on the ground floor, a minimum of 50% of the area of the street front ground floor facades shall be constructed with glazed windows and doors or other transparent, translucent materials.
- (ii) Where Residential uses are incorporated on the ground floor, the building design shall incorporate, to the degree feasible, a minimum of 25% of the ground floor façade below the ceiling, constructed with windows and/or doors or other transparent materials or semi-transparent materials, and/or incorporate entries in to individual dwelling units from the street level. Residential units that have direct access to the streetscape from an individual unit shall, to the degree feasible, utilize design features to provide interior privacy (such as having a ground floor elevation that is above the sidewalk grade).
- (iii) Parking structures along the ground floor facades shall have screening composed of architectural systems designed to mitigate views into the parking structure from street level, or the general façade detailing of the building above may be continued to the ground plane.
- (iv) Loading/trash/service areas along Primary Pedestrian Corridors shall be minimized. Where such loading/trash/service areas do occur along Primary Pedestrian Corridors, they shall be screened from public view through the use of roll down doors or similar treatment.

B. Streets B and C. These streets are designated as Secondary Pedestrian Corridors and are designed to accommodate modest pedestrian activity and access to the uses on the Property. Streets B and C shall generally incorporate the following elements, which may be adjusted with approval of an FDPA:

- (i) Residential uses on the ground floor shall incorporate, to the degree feasible, a minimum of 25% of the ground floor façade below the ceiling, constructed with windows and/or doors or other transparent materials or semi-transparent materials, and/or incorporate entries in to individual dwelling units from the street level. Residential units that have direct access to the streetscape from an individual unit shall utilize design features to provide interior privacy (such as having a ground floor elevation that is above the sidewalk grade).

- (ii) Parking structures along the ground floor facades shall have screening composed of architectural systems designed to mitigate views into the parking structure from street level, or the general façade detailing of the building above may be continued to the ground plane.
- (iii) Loading/trash/service areas shall be screened from public view to the extent feasible through the use of roll down doors, architectural treatments and other such similar treatments or by locating these areas at a distance away from the streetscape area.

14. Parking Structure Facade. The proposed above grade parking structure shall be designed to so include an active layer of occupied space. Parking garage and loading/trash/service entrances may be adjusted with site plan approval, provided such relocation or adjustment does not negatively impact the quality of the streetscape or significantly increase the width of the loading entrance.

15. Building Heights. The minimum and maximum building heights for the proposed building on the Property are identified on the CDP/FDP. The final height may be less than the maximum height shown on the CDP/FDP but not less than the minimum.

Building height shall be measured in accordance with the provisions of the Fairfax County Ordinance and shall be exclusive of those structures that are excluded from the maximum height regulations as set forth in Section 2-506 of the Ordinance, including for example, penthouses and other rooftop structures. Such penthouses and other rooftop structures may be constructed as permitted under Section 2-506 of the Ordinance and shall be a maximum of 20 feet. All building penthouses/rooftop structures shall be screened and integrated into the architecture of the building.

16. Electric Transformers. The Applicant intends to provide electric transformers to serve the Property within the building along Street C as shown in Sheets A-1.0 and A-4.1. In the event this location is not acceptable to electric utility company, the Applicant reserves the right to locate the electric transformers to another area along Streets A, B or C; the location of which shall be determined in concert with DPZ, FCDOT and the Office of Community Revitalization ("OCR") without the requirement for a PCA, CDPA or FDPA.

17. Telecommunications Equipment. Telecommunications equipment may be placed on the proposed building's rooftop. Any such facilities must comply with the applicable requirements of the Ordinance and be screened and/or setback sufficiently from the perimeter of the roof and penthouse such that they are not visible from the surrounding streets at street level. Other screening measures may be used such as including the facilities as part of the architecture of the buildings, utilizing compatible colors, or employing telecommunication screening material and flush mounted antennas.

BUILDING PRACTICES

18. Residential Building Certifications.

- A. The Applicant shall include, as part of the building plan submission for the residential building to be constructed on the Property, a list of specific credits within the most current version of the U.S. Green Building Council's Leadership in Energy and Environmental Design New Construction (LEED®-NC) rating system at the time of the project's registration, or other LEED rating system determined to be applicable by the U.S. Green Building Council (USGBC), or its equivalent (as determined jointly by the Applicant and Fairfax County), that the Applicant anticipate attaining.

Except as otherwise provided below in Paragraph E as an alternative, a LEED or equivalent-accredited professional (the "LEED-AP") who is also a professional engineer or architect shall provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED-NC certification of the building.

- B. The Applicant shall designate the Chief of the Environment and Development Review Branch ("EDRB") of DPZ as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.
- C. Prior to the building plan approval for the building to be constructed, the Applicant shall post a "green building escrow" in the form of cash or a letter(s) of credit from a financial institution acceptable to DPWES as defined in the Public Facilities Manual (PFM), in the amount of \$2.00/square foot of GFA, as shown on the approved site plan. This green building escrow shall be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of LEED-NC certification, by the USGBC, under the project's registered version of the LEED-NC rating system or other LEED rating system determined, by the USGBC, to be applicable to each building. The provision to EDRB of documentation from the USGBC that each building has attained LEED-NC certification will be sufficient to satisfy this commitment.
- D. At the time LEED-NC certification is demonstrated to the EDRB, the escrowed funds and/or letter(s) of credit shall be released to the Applicant.

If prior to bond extension, reduction or final bond release for the building site, whichever occurs first, the Applicant provides to EDRB documentation demonstrating that LEED-NC certification for the building has not been attained but that the building has been determined by the USGBC to fall within three (3)

points of attainment of LEED-NC certification, 50% of the green building escrow will be released to the Applicant; the other 50% will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of county environmental initiatives. If the certification is still in progress at the time of application for the bond extension or reduction, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond extension or extension. However, the documentation must be provided prior to the final bond release for the building site.

If prior to the bond extension, reduction or final bond release for the building site, whichever occurs first, the Applicant fails to provide documentation to EDRB demonstrating attainment of LEED-NC certification or demonstrating that the building has fallen short of LEED-NC certification by three (3) points or less, the entirety of the escrow for that building will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives. If the certification is still in progress at the time of application for bond extension or reduction, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond extension or reduction. However, the documentation must be provided prior to the final bond release for the building site.

- E. As an alternative to the actions outlined in the Paragraphs A, C and D above, the Applicant may choose, at its sole discretion, to pursue a certification higher than LEED-NC, in which case the LEED-AP will provide certification statements at the time of building plan review confirming that the items on the list of specific credits will meet at least the minimum number of credits necessary to attain LEED-NC Silver certification.

Prior to building plan approval for the building to be constructed, the Applicant shall submit documentation, to EDRB, regarding the USGBC's preliminary review of design-oriented credits in the LEED program. This documentation will demonstrate that the building is anticipated to attain a sufficient number of design-related credits that, along with the anticipated construction-related credits, will be sufficient to attain LEED-NC Silver certification. Under this alternative, the Applicant is not required to provide a "green building escrow" unless the Applicant fails to provide the above referenced documentation that the building is anticipated to attain LEED-NC Silver certification.

Prior to final bond release of the building site, the Applicant shall submit documentation to EDRB, confirming the status of LEED certification.

- F. As an alternative to the actions outlined in the Paragraphs A, C, D and E above the Applicant may select, subject to EDRB approval, an alternate residential rating system such as Earth Craft or the 2012 National Green Building Standard (NGBS) using the ENERGY STAR® Qualified Homes path for energy performance that may be implemented without an escrow. If one of the alternate

residential rating systems listed herein is selected, the Applicant shall demonstrate attainment of the selected certification from a rater recognized through the selected program prior to the bond extension, reduction or final bond release for the building site, whichever comes first. If the certification is still in progress at the time of application for bond extension or reduction, the time frame for the provision of the documentation described above shall be automatically extended to the time of the next bond extension or reduction. However, the documentation must be provided prior to the final bond release for the building site.

19. Sustainable Energy Practices. To promote efficient, renewable and sustainable energy practices:
- A. Electric Vehicle Charging Infrastructure. A minimum of two (2) electric vehicle recharging stations that serve four (4) parking spaces and conduit to facilitate additional future recharging stations shall be provided in the parking garage.
 - B. Energy and Water Data. To the extent there are master electric, gas and water meters for entire building, upon request by the County, the Applicant shall provide to the County aggregated non-proprietary energy and water consumption data, as practicable, for the building.

SITE DESIGN AND AMENITIES

20. Landscape Plan. The CDP/FDP includes a landscape plan for the Property consisting of an overall plan and details regarding streetscapes, publicly accessible park areas, courtyards and private amenity areas. Alterations and refinements to the landscaping may be made with approval of a FDPA without the need for a PCA or CDPA. As part of the first and all subsequent site plan submission for the Property, the Applicant shall submit to the Urban Forestry Management Division ("UFMD") of the DPWES for review and approval a detailed landscape plan that is in substantial conformance with the quantity and quality of plantings and materials landscaping shown on the CDP/FDP, and shall include, among other things, irrigation information, design details for tree wells and other similar planting areas on structures and along streets, as well as tree canopy. These details shall include the composition of planting materials, methods for providing suspended pavement over tree root zones to prevent soil compaction, and methods for ensuring the viability of plantings on structures and along streets. Adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering considerations.

The existing vegetation map on Sheet C-4 and the landscape plan on Sheet L0.00 identify certain individual trees to be preserved as further detailed in Proffer 22. Should trees identified to be preserved along the south side of Street C fail to survive, the Applicant shall develop and implement a landscape plan to be approved by UFMD that will include interim replacement street trees and additional plantings designed to screen views of the adjacent uses.

21. Streetscaping. Streetscaping shall be installed throughout the Property as generally depicted on the CDP/FDP. Streetscape elements shall include: a landscape amenity panel located immediately behind the face of curb; a clear pedestrian sidewalk adjacent to the landscape amenity panel; and a building zone between the pedestrian sidewalk and the face of the building that is designed to allow access to the building and/or additional landscaping adjacent to residential uses and also storefront browsing, outdoor display, outdoor dining, and similar uses adjacent to Non-Residential uses. Streetscaping elements may be adjusted at the time of site plan approval, provided the quality and dimensions of the streetscape are in substantial conformance with that shown on the CDP/FDP.

A. Street Trees. Tree planting sites are depicted on the CDP/FDP but remain subject to revision as may be approved by the UFMD at the time of site plan review. The Applicant shall retain the services of a certified arborist or Registered Consulting Arborist to monitor the design and inspect the planting of the street trees and shall notify UFMD in writing or by electronic mail no later than three business days prior to tree pit construction to allow for County inspection. Where minimum planting widths of eight (8) feet cannot be provided, alternative measures either as identified in the "Tysons Urban Design Guidelines" (endorsed by the Board of Supervisors on January 25, 2012) or as approved by the UFMD, shall be used to satisfy the following specifications for all planting sites:

- (i) A minimum of 4 feet open surface width and 16 square feet open surface area for Category III and Category IV trees, with the tree located in the center of the open area;
- (ii) A minimum rooting area of 8 feet wide (may be achieved with techniques to provide un-compacted soil below pavement), with no barrier to root growth within four feet of the base of the tree on Jones Branch Drive and within 3.5 feet of the base of the tree on Streets A, B and C;
- (iii) A minimum soil depth of four (4) feet as measured to the shallow most point of the tree pit;
- (iv) Soil volume for Category III and Category IV trees (as defined in Table 12.17 of the PFM) shall be 700 cubic feet per tree for single trees, but may be reduced to a minimum of 400 cubic feet where necessary, such as where utility locations preclude greater soil volume. For two trees planted in a contiguous planting area, a total soil volume of at least 600 cubic feet per tree shall be provided. For three or more trees planted in a contiguous area, the soil volume shall equal at least 500 cubic feet per tree. A contiguous area shall be any area that provides root access and soil conditions favorable for root growth throughout the entire area.
- (v) Soil specifications in planting sites shall be provided in the planting notes to be included in all site plan submissions;

- (vi) All shade trees shall be a minimum of 3 to 3.5 inches in caliper at the time of planting; all flowering trees shall be a minimum of 2 inch caliper at the time of planting; and all new evergreen trees shall be a minimum of eight (8) feet in height at the time of planting;
 - (vii) Tree zones shall be installed with a fully automatic irrigation system; and
 - (viii) If some street trees have to be planted within utility easements, the Applicant shall replace any street trees that are removed to facilitate repairs of utilities in these easements.
- B. Non-Invasive Plant Materials. Invasive species, as defined by the Fairfax County PFM, shall not be used on the Property or in any off-site improvement areas associated with the Property, such as off-site publically accessible park space.
- C. Utility Locations. Utilities, including, but not limited to water, sanitary sewer and storm sewer utility lines, shall be installed within the street network to the maximum extent feasible as determined by DPWES or shall be placed in locations that do not conflict with the landscaped open space areas and streetscape elements shown on the CDP/FDP and/or subsequent FDP as determined by DPWES. If there is no other option, utilities may be placed within open space or streetscape areas provided that the long-term health of trees and other plantings is ensured by the provision of sufficient soil volume as outlined in these proffers, as determined by the UFMD. Adjustments to the type and location of plantings shall be permitted to avoid conflicts with utilities and other site engineering considerations.
- Maintenance access points to SWM Facilities and electric vaults beneath the streetscape should be located outside clear pedestrian walkway zone of the streetscape when feasible. If the access points must be located in the walkway zone, they shall be designed as a lift out panel with the same paving materials as the walkway (subject to ADA requirements), be flush with the walkway, and meet ADA accessibility requirements.
- D. Sight Distance Considerations. If determined at the time of site plan approval that street tree locations conflict with sight distance requirements, the Applicant shall investigate whether limited pruning or minor adjustments to the locations of street trees will alleviate sight distance concerns. In the event VDOT does not approve the tree locations even after the changes anticipated above the Applicant shall be permitted to relocate the affected street tree without the need for confirmation from DPZ, subject to approval by the UFMD. If a tree that is deleted due to VDOT requirements would result in a tree canopy below 10% on the Property, the tree(s) shall be accommodated in another location on the Property, as approved by DPZ in consultation with UFMD so as to ensure the 10% tree canopy is met.
- E. Streetscape Furnishings and Materials and Lighting. Unified and high quality streetscape materials and site furnishings to be used on the Property are shown on

Sheet L3.01 of the CDP/FDP. Any modifications to these materials and furnishings shall be compatible with those identified in the Tysons Urban Design Guidelines, dated January 14, 2012, as may be amended and or modified.

All streetscape lighting shall be energy efficient. All on-site, outdoor and parking garage lighting shall not exceed that permitted under the Outdoor Lighting Standards of Section 14-900 of the Ordinance. The same or similar street lights shall be used consistently throughout the Property. All parking lot and new building mounted security lighting shall utilize full cut-off fixtures. Recessed lighting shall be directionally shielded to mitigate the impact on the adjacent properties.

- F. Signage. Signage for the Property shall be provided in accordance with the requirements of Article 12 of the Ordinance or as may be approved with a Comprehensive Sign Plan ("CSP") for the Property.

The placement of traffic control signage on public streets shall be coordinated with VDOT. Wayfinding signage and elements may be provided as part of a CSP for the Property or as part of a larger CSP for the Tysons area.

- G. Maintenance. The Applicant shall maintain and replace in-kind all pedestrian realm elements within the Property. The pedestrian realm includes all areas between the back of curb and the building zone whether located within the public right-of-way or on private land with public access easements. The Applicant shall enter into the appropriate agreement, in a form approved by the Office of the County Attorney, with the County (or other public entity, as needed) to permit the Applicant to perform such maintenance. An alternative maintenance agreement, such as a Business Improvement District, may be entered into upon written agreement of both the County and the Applicant without the requirement for a PCA. Maintenance commitments include, but are not limited to:

- (i) All plantings including trees, shrubs, perennials, and annuals;
- (ii) All associated irrigation elements;
- (iii) All hard surfaces;
- (iv) All streetscape furnishings including trash and recycling receptacles, benches, bike racks and non-standard structures;
- (v) All lighting fixtures, brackets and poles;
- (vi) All non-VDOT standard sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes;
- (vii) Snow removal;
- (viii) Leaf removal;

- (ix) Trash, recycling and litter removal;
- (x) Decorative retaining walls;
- (xi) Special drainage features, such as Low Impact Design facilities; and
- (xii) All urban park amenities including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, and art.

22. Tree Preservation.

- A. Tree Preservation Plan. The Applicant shall submit a tree preservation plan and narrative as part of the first and all subsequent site plan submissions. The tree preservation plan and narrative shall be prepared by a certified arborist or registered consulting arborist (the "Project Arborist"), and shall be subject to the review and approval of UFMD. The tree preservation plan shall provide for the preservation of those individual trees identified for preservation on Sheet C-4 of the CDP/FDP. It shall include an inventory which identifies the location, species, size, crown spread and condition rating percent of all individual trees to be preserved. The condition analysis shall be prepared using methods outlined in the latest edition of the *Guide for Plant Appraisal*. Specific tree preservation activities designed to maximize the survivability of trees designated for preservation shall be incorporated into the Tree Preservation Plan. Activities should include, but are not limited to, crown pruning, root pruning, mulching and fertilization.
- B. Tree Preservation Walk-Through. The Applicant shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree preservation walk-through meeting, the Project Arborist shall walk the limits of clearing and grading with a UFMD representative to determine where adjustments to the clearing limits may be made to increase the survivability of the individual trees to be saved and how such adjustments shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump is to be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to nearby trees identified for preservation.
- C. Limits of Clearing and Grading. The Applicant shall conform strictly to the limits of clearing and grading as shown on the CDP/FDP, subject to allowances specified in these proffered conditions and for the installation of utilities and/or sidewalks. If it is determined necessary to install utilities and/or sidewalks in areas protected by the limits of clearing and grading as shown on the CDP/FDP, they shall be located in the least disruptive manner necessary as determined by the UFMD. A replanting plan shall be developed and implemented, subject to

approval by the UFMD, DPWES, for any areas protected by the limits of clearing and grading that must be disturbed for such trails or utilities.

- D. Tree Preservation Fencing. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the Tree Preservation Plan, demolition plan, and Phase I and Phase II erosion and sediment control sheets, as may be modified by Paragraph E below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of the Project Arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by the UFMD.

- E. Root Pruning. The Applicant shall root prune, as needed to comply with the tree preservation requirements of these Proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the site plan submission. The details for these treatments shall be reviewed and approved by the UFMD, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- (i) Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- (ii) Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- (iii) Root pruning shall be conducted with the supervision of the Project Arborist.
- (iv) An UFMD representative shall be informed when all root pruning and tree protection fence installation is complete.

F. Demolition of Existing Structures. The demolition of all existing features and structures within protected areas shown on the CDP/FDP shall be done by hand without heavy equipment and conducted in a manner that does not impact individual trees that are to be preserved.

G. Site Monitoring. During any clearing or tree/vegetation/structure removal on the Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The Project Arborist shall monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFMD approvals. The monitoring schedule shall be described and detailed in the tree preservation plan.

H. Tree Appraisal and Bonding. The Project Arborist shall determine the replacement value of the existing 30 inch Red Oak tree identified for presentation in the northwest corner of the Property (the "Red Oak Tree"). The Red Oak Tree and its value shall be identified on the Tree Preservation Plan at the time of first submission of the site plan. The replacement value shall take into consideration the age, size and condition of the Red Oak Tree and shall be determined by the "Trunk Formula Method" contained in the latest edition of the Guide for Plan Appraisal published by the International Society of Arboriculture, subject to review and approval by UFMD.

At the time of the site plan approval, the Applicant shall post a cash bond or a letter of credit payable to the County of Fairfax to ensure preservation and/or replacement of the Red Oak Tree (for which a tree value has been determined in accordance with the paragraph above) should it die or be dying due to unauthorized construction activities. The letter of credit or cash deposit shall be equal to 50% of the replacement value of the Red Oak Tree. At any time prior to final bond release for the improvements on the Property, should the Red Oak Tree die, be removed, or be determined to be dying by UFMD due to unauthorized construction activities, the Applicant shall replace the Red Oak Tree at its expense with a tree in the same location to be a focal point, along with other trees that together will have an equivalent canopy cover to the Red Oak Tree, as approved by UFMD. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of the Red Oak Tree. This payment shall be determined based on the Trunk Formula Method and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the bond for the improvements on the Property, any amount remaining in the tree bond required by this proffer shall be returned/released to the Applicant.

I. The Applicant reserves the right to try to preserve other trees on the Property, not shown for preservation on Sheet C-4.

23. Interim Conditions and Standards. Due to the nature of the proposed development and the existing conditions of adjacent properties, development may result in various interim conditions on the Property or on adjacent properties where improvements are proffered.

The Applicant shall ensure such conditions provide reasonable pedestrian connections, vehicular circulation, temporary streetscaping and landscaping, and public park treatments as follows, or as may be adjusted with FDPA approval:

- A. Construction of an interim sidewalk a minimum of a five (5) feet in width and installation of interim street lights along the north side of Street C between the Property and Westbranch Drive.
- B. Installation of street trees, with a minimum size of 2 inch caliper, approximately every 50 feet, along the north side of Street A. Interim street tree planting shall not be required to meet the minimum planting width/area standard for permanent street trees.
- C. Grading and seeding of areas on the Property where existing improvements are removed to accommodate a portion of the proposed development, and are not scheduled to commence construction within 18 months.

TRANSPORTATION IMPROVEMENTS

24. Grid of Streets. The Applicant shall construct and place into operation a grid of streets throughout the Property as generally located and depicted on Sheets C-5 and C-9 of the CDP/FDP. The functional classification of the streets on and adjacent to the Property is provided below:

Street	Classification
Jones Branch Drive	Collector
Street A	Local
Street B	Local
Street C	Local

- A. Public Streets. Those streets constructed within the limits of the Property and identified on the CDP/FDP as Street A, Street B and Street C shall be designed and constructed as public streets. Public street improvements proposed herein shall be subject to VDOT approval and be in general conformance with the *Transportation Design Standards for Tysons Corner Urban Center* (the "Design Standards") of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended (the "MOA"), subject to modifications/waivers as may be granted. The Applicant shall design and construct these streets to meet the Design Standards and shall work diligently with VDOT and the County during the site plan approval processes to ensure that the improvements proposed to existing and new public streets will be accepted into the VDOT system for maintenance. Right-of-way necessary for the existing and new public streets, as may be further qualified by these Proffers, shall be dedicated and conveyed to the Board of Supervisors in fee simple, as applicable, at the time of site plan approval. It is understood that for an interim period of time, the section of Street C between Street B and Westbranch Drive will be a private street, not maintained by VDOT. It is envisioned that with future

redevelopment in the vicinity of the Property, this section of Street C will become a public street. A public access easement in a form acceptable to the County Attorney shall be recorded over the private section of Street C.

The Applicant shall diligently pursue VDOT acceptance of improvements to existing streets and new public streets, for secondary street maintenance in accordance with the process outlined in VDOT's Secondary Street Acceptance Requirements (the "SSAR"), as amended, including VDOT's written certification that such streets and/or improvements have been constructed in a manner consistent with the VDOT approved plans and compliant with all applicable regulations ("VDOT's Written Certification"). In the event the Board of Supervisors has not requested that VDOT accept the dedicated new public streets or improvements into the secondary street network for maintenance within five (5) years of VDOT's Written Certification, such street(s) may be retained by the Applicant upon notification to, and the concurrence of FCDOT, as a private street subject to a public access and maintenance agreement in a form acceptable to the County Attorney. In such event, a PCA, CDP/FDPA and/or FDPA will not be required.

- B. Rights-of-Way. The Applicant shall dedicate and convey in fee simple to the Board of Supervisors rights-of-way for each of the public streets listed in Paragraph A above. Dedication shall include the area of the adjacent landscape amenity panel and sidewalk and shall occur at the time of site plan approval, with the following exceptions:

- (i) If at the time of site plan approval it is determined that stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will prevent VDOT and/or Fairfax County from accepting the landscape amenity panel/sidewalk within the proposed right-of-way, the Applicant shall provide dedication and/or vacation of existing fee simple right-of-way measuring 18 inches from the proposed face of curb line and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access shall be recorded over the reserved landscape amenity panel/sidewalk areas until such time as they are dedicated. This reservation area shall include easements for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within the amenity panel/sidewalk area for bus shelters as determined at the time of FDP or site plan. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors shall occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.

Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas continue to be

unacceptable to VDOT and/or Fairfax County for inclusion in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and the Applicant shall grant a public sidewalk and utility easement, in a form acceptable to the Office of the County Attorney. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements for bus shelters as determined at the time of site plan.

- (ii) If at the time of site plan approval it is unclear whether stormwater management facilities, electric vaults or other similar facilities proposed to be located beneath the landscape amenity panel/sidewalk will be acceptable to VDOT, Dominion Power and/or Fairfax County, the Applicant shall provide dedication measuring 18 inches from the proposed face of curb line at the time of site plan approval and shall reserve for potential future dedication the landscape amenity panel and sidewalk areas. A temporary public access easement in a form acceptable to the County Attorney shall be recorded over the reserved landscape amenity panel/sidewalk areas until such time as such areas are dedicated. The reservation area shall include easements that allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements for bus shelters as determined at the time of site plan. Conveyance of the amenity panel/sidewalk areas to the Board of Supervisors shall occur following construction of the street and streetscape improvements and final street acceptance inspection by Fairfax County and/or VDOT subject to the stipulations in these Proffers.
- (iii) Should it be determined following final street acceptance inspection that the landscape amenity panel and sidewalk areas are not acceptable to VDOT and/or the County to be included in the right-of-way, the reservation of potential future dedication of the landscape amenity panel and sidewalk areas shall be released and a public sidewalk and utility easement, in a form acceptable to the County Attorney, shall be granted in its place. This easement shall allow for the installation of signage necessary for safety and operation of the street as well as parking regulation equipment by VDOT and/or the County. In addition, the Applicant shall provide easements within any privately-owned amenity panel/sidewalk area for bus shelters identified on the CDP/FDP or any subsequent FDPA, as determined at the time of site plan.

C. Naming. The Applicant reserves the right to provide different names for the streets than those shown on the CDP/FDP.

- D. Meaning of Construct. For purposes of these transportation proffers, "construct" shall mean that a committed road improvement is substantially complete and is available for use by the public for travel whether or not the improvement has been accepted for maintenance by the state.

25. Jones Branch Drive.

- A. The Applicant shall design and construct improvements to Jones Branch Drive along the Property's frontage as generally depicted on Sheet C-5 of the CDP/FDP. Jones Branch Drive shall be improved and restriped in general accordance with the typical section depicted on Sheet C-9, as an undivided four-lane Collector, with two travel lanes in each direction, a parking lane along the Property's frontage and one bicycle lane in each direction, and variable pavement provided to accommodate pavement transitions as may be required by VDOT.
- B. Improvements to Jones Branch Drive along the Property's frontages shall include a pavement section designed to accommodate bicycle lanes on both sides of the street. To the extent feasible, striping of a bicycle lane on the east side of Jones Branch Drive shall be extended from the Property to Westpark Drive as shown on Sheet C-5. Striping of bicycle lanes shall be subject to the approval of the County and VDOT.
- C. The final design of the improvements to Jones Branch Drive as generally described above shall be further refined in conjunction with the submission of the site plan for the Property. Improvements to Jones Branch Drive shall be constructed prior to the issuance of the first RUP for the Property.

26. Streets A and B.

- A. The Applicant shall design and construct Street A and Street B through the Property as generally depicted on Sheet C-5 of the CDP/FDP. They shall be constructed in general accordance with the typical section depicted on Sheet C-9 as a Local Street consisting of two (2) travel lanes (one in each direction) and two parking lanes.

The final design of Streets A and B as generally described above shall be further refined in conjunction with the submission of the site plan for the proposed building on the Property. Street A and Street B shall be constructed prior to the issuance of the first RUP for the Property.

27. Street C.

- A. The Applicant shall design and construct Street C through the Property and across adjacent properties, identified on the 2014 Fairfax County tax maps as 29-4 ((7)) 8 and 11A, connecting Jones Branch Drive and Westbranch Drive as generally depicted on Sheet C-5 of the CDP/FDP. It shall be constructed as an interim section of a Local Street consisting of two (2) travel lanes (one in each direction),

parking lanes provided in select locations, and a six (6) foot wide interim sidewalk on the south side as shown on Sheets C-5 and C-9. It is anticipated that future redevelopment by others on adjacent properties will improve Street C to its ultimate condition with parking lanes on both sides of the street, as shown on Sheet C-8A. The section of Street C between Street B and Westbranch Drive will initially be provided as a private street; a public access easement in a form acceptable to the County Attorney shall be recorded over this private section of Street C prior to site plan approval.

B. The final design of the improvements to Street C as generally described above shall be further refined in conjunction with the submission of the site plan for the Property. Street C shall be constructed prior to the issuance of the first RUP for the Property.

28. Public Street Standards. All public street improvements proposed herein shall be subject to VDOT approval, and shall be in general conformance with standards included in Attachment D (*Transportation Design Standards for Tysons Corner Urban Center*) of the Memorandum of Agreement approved by the Board of Supervisors on September 13, 2011, as may be amended, subject to any permitted modifications and/or waivers that may be granted. p

29. Tysons Grid of Streets Transportation Fund. The Applicant shall make a contribution to the County's Tysons Grid of Streets Transportation Fund for each market rate residential unit and each square foot of new non-residential space constructed on the Property in keeping with the rates and applicable rate adjustments set forth in the *Guidelines for the Tysons Grid of Streets Transportation Fund* endorsed by the Board of Supervisors on January 8, 2013 (the "Grid Guidelines"). This contribution is not subject to further adjustment outlined in Proffer 53 and shall not apply to any public-use facilities constructed on the Property. The contribution shall be paid on or before the issuance of the initial RUP or Non-RUP for the building based on the actual GFA of non-residential space and/or the actual number of market rate residential units in the building.

The Applicant shall receive and deduct credits against the contributions as approved by the County in conformance with the Grid Guidelines. Pursuant to the Grid Guidelines, the Applicant shall receive credit for the hard and soft costs associated with the construction of the segment of Street C from the Property's western boundary to Westbranch Drive.

30. Tysons-wide Transportation Fund. The Applicant shall make a contribution to the County's Tysons-wide Transportation Fund for each market rate residential unit and each square foot of new non-residential space constructed on the Property in keeping with the rates and applicable rate adjustments set forth in the *Guidelines for the Tysons-wide Transportation Fund* endorsed by the Board of Supervisors on January 8, 2013 (the "Tysons-wide Guidelines"). This contribution is not subject to further adjustment outlined in Proffer 53 and shall not apply to any public-use facilities constructed on the Property. The contribution shall be paid on or before the issuance of the initial RUP or Non-RUP for the building based on the actual GFA of non-residential space and/or the actual number of market rate residential units in the building.

The Applicant shall receive and deduct credits against the contributions as approved by the County in keeping with the Tysons-wide Guidelines.

31. Inter-Parcel Access. At the time of site plan approval for the Property, the Applicant shall record an inter-parcel access easement, in a form acceptable to the County Attorney, to permit a future connection from property identified on the 2014 Fairfax County tax maps as 29-4 ((7)) 4 to Street C as shown on Sheet C-5 of the CDPA/FDPA, or as may be alternatively determined at the time of site plan approval. In order to facilitate the construction of the inter-parcel access connection by others, the Applicant shall provide construction easements at no cost to the constructing party upon 30 days written demand by the County.

BICYCLE, BUS AND PEDESTRIAN FACILITIES

32. Bicycle Circulation. In combination with the street and streetscape improvements identified in these Proffers, the Applicant shall stripe on-street bicycle lanes on both sides of Jones Branch Drive along and across from the Property's frontage. To the extent feasible, striping of a bicycle lane on the east side of Jones Branch Drive shall be extended from the Property to Westpark Drive as shown on Sheet C-5. Striping of bicycle lanes shall be subject to the approval of the County and VDOT.
33. Bicycle Parking. Bicycle racks, bike lockers, and/or bike storage areas shall be provided with the specific amounts and locations determined at the time of site plan approval in consultation with the FCDOT Bicycle Coordinator. Bicycle racks located outside of building and parking garage shall be inverted U-style racks or other design consistent with the Tysons Urban Design Guidelines and approved by FCDOT. The total number of bike parking/storage spaces provided shall be generally consistent with the Fairfax County Policy and Guidelines for Bicycle Parking. The applicant shall also provide wayfinding signage to assist bicyclists in locating bike parking; such signage to be approved by FCDOT.
34. Marked Crosswalks. The Applicant shall install marked pedestrian crosswalks at all locations shown on Sheet C-5 of the CDP/FDP, subject to VDOT approval. The crosswalk aligning with the linear pedestrian pathway described in Proffer 43A (iii) is an interim location for a crosswalk. At the time of site plan approval for the Property, the Applicant shall escrow with DPWES the cost of relocating the crosswalk east to the intersection of Street B and Street C.
35. Bus Shelter. The Applicant shall relocate the existing bus shelter located along its Jones Branch Drive frontage on to adjacent property north of the Property as shown on Sheet C-6 of the CDP/FDP, as may be adjusted at final site plan as approved by FCDOT. The bus shelter shall be relocated and available for public use prior to the construction of the new streetscape along the Property's Jones Branch Drive frontage.

PARKING

36. Zoning Ordinance Requirements. Parking on the Property shall be provided in accordance with the parking requirements for the PTC District set forth in Section 6-509 and Article 11 of the Fairfax County Ordinance, and as shown on the CDP/FDP. Tandem and valet parking, shall be permitted and, subject to Board approval, shall count toward parking requirements. Tandem parking spaces may be used for residential units with two cars. The exact number of spaces to be provided shall be determined at the time of site plan approval based on the specific uses, number of residential units and bedroom mix.
37. Parking Stipulations.
- A. Subject to VDOT approval, the Applicant shall provide surface parking spaces along the streets as generally as shown on the CDP/FDP and as may be adjusted with site plan approval. The spaces may be part of or in addition to the total number of required parking spaces to be provided. If requested by the County and/or VDOT, signs shall be installed that restrict the use of on-street parking spaces on the Public Streets.
 - B. The Applicant reserves the right to restrict the use of spaces along any interim private streets (whether temporary or permanent), through appropriate signage or such other means as the Applicant determines, that otherwise are not required to satisfy the parking requirements for use as temporary, leasing, short term parking, zip car parking and/or similar use.
 - C. The Applicant shall be permitted to install and maintain parking controls on the existing surface parking lot on the Property, without the requirement for a FDP, in order to control Metro-related parking by the general public.
 - D. The sale or lease rates of parking spaces shall be “unbundled” from the purchase price or lease rate of the individual dwelling units; meaning a unit’s purchase price or lease rate shall be exclusive of parking costs.
38. Future Parking Revisions.
- A. Ordinance Revisions. The Applicant reserve the right to provide parking at revised rates as may be permitted by a future amendment to the Fairfax County Ordinance. Optional use of revised rates shall not require a CDP/FDPA or PCA, provided there is no increase in the size or height of above-grade parking structures.
 - B. Increases. The Applicant reserve the right to seek a special exception for an increase in parking for the Property; such special exception application shall not require a CDP/FDPA or PCA, provided there is no increase in the size or height of above-grade parking structures.

TRANSPORTATION DEMAND MANAGEMENT

39. Tysons Transportation Management Association. The Applicant shall contribute towards the establishment of a transportation management association (the "TMA"), which has been established for the Tysons Corner Urban Center and to which all other Tysons property owners will also contribute.

- A. The Applicant shall make a one-time contribution for the establishment of this TMA based on a participation rate of \$0.05 per gross square foot of new residential uses to be constructed on the Property.
- B. The TMA contribution shall be paid prior to site plan approval for the proposed building on the Property, but in any event no later than ten (10) years from the date of rezoning approval.
- C. The Applicant may, in its sole discretion, join or otherwise become associated with the TMA established for the purpose of administering TDM programs in the Tysons Corner Urban Center and transfer some or all administrative, marketing and/or monitoring and similar functions of the Applicant's TDM program described in Proffer 40 to the TMA, whereupon portions of Proffer 40 related to administration, marketing and monitoring shall be void and of no further force or effect. Further, if determined by FCDOT that a proactive, private TDM program is no longer necessary, the TDM structures described in Proffer 40 may be rendered null and void in whole or in part without the need for a PCA.

40. Transportation Demand Management Plan.

- A. The Applicant intends to join the Arbor Row TDM Administrative Group, a TDM Administrative Group active in the vicinity of the Property. The design, implementation and administration of a transportation demand management program for the Property will be in keeping with the proffered elements of the Arbor Row TDM Program as described in the Arbor Row Transportation Demand Management Plan prepared by M.J. Wells + Associates, Inc. dated February 22, 2012, as revised through August 31, 2012, and as may be amended (the "TDM Plan"), with the following modifications:

The target trip reductions objectives for the Property shall be as follows:

<u>Development Levels</u>	<u>Percentage Vehicle Trip Reduction</u>
Up to 65 million sq. ft. of GFA	30%
65 million sq. ft. of GFA	35%
84 million sq. ft. of GFA	40%
90 million sq. ft. of GFA	43%
96 million sq. ft. of GFA	45%
105 million sq. ft. of GFA	48%
113 million sq. ft. of GFA	50%

The Applicant shall notify FCDOT in writing of its joining of the Arbor Row TDM Administrative Group within 30 days of acceptance by the Arbor Row Administrative Group or prior to site plan approval for the new building to be constructed on the Property whichever first occurs.

- B. TDM Alternative Program. The Applicant reserves the right to design, implement and administer its own TDM Program as outlined below. Should the Applicant choose to develop and implement a TDM Program separate from Arbor Row, notification of the same shall be provided in writing to FCDOT prior to site plan approval for the new building to be constructed on the Property. Such separate program shall be approved by FCDOT prior to the issuance of the first building permit for the new building to be constructed on the Property. In such event, the Applicant shall not be required to secure approval of a PCA, CDPA or FDPA.
- (i) Proffered Elements. The proffered elements of the TDM Program as set forth below are more fully described in the 7915 Jones Branch Drive Transportation Demand Management Plan prepared by Wells + Associates, Inc. dated August 21, 2014 (the "TDM Plan"). It is the intent of this Proffer that the TDM Plan will adapt over time to respond to the changing transportation related circumstances of the Property, the surrounding community and the region, as well as to technological and/or other improvements, all with the objective of meeting the trip reduction goals as set forth in these Proffers. Accordingly, modifications, revisions, and supplements to the TDM Plan as coordinated with FCDOT can be made without the need for a PCA provided that the TDM Plan continues to reflect the proffered elements of the TDM Program as set forth below.
 - (ii) Definitions. For purposes of this Proffer, "Build Out" shall be deemed to occur upon the issuance of 95% of all Residential Use Permits ("RUPs") for the residential units site plan approved and constructed on the Property.
 - (iii) Trip Reduction Objective. The objective of this TDM Program shall be to reduce the vehicle trips generated by residents of the Property during weekday peak hours associated with the adjacent streets as more fully described in the TDM Plan, by meeting the percentage vehicle trip reductions established by the Comprehensive Plan as set forth below. These trip reduction percentages shall be multiplied by the total number of residential vehicle trips that would be expected to be generated by the uses developed on the Property as determined by the application of the Institute of Traffic Engineers, 9th Edition, Trip Generation rates and/or equations (the "ITE Trip Generation"), and the number of trips determined by the product of such equation shall be referred to herein as the "Maximum Trips After Reduction."

- (iv) Reduction Targets. For purposes of this calculation, the maximum number of dwelling units proposed to be constructed on the Property as determined at the time of site plan approval for the proposed building shall be applied to the calculation described in the preceding sentence. The target reductions shall be as follows:

<u>Development Levels</u>	<u>Percentage Vehicle Trip Reduction</u>
Up to 65 million sq. ft. of GFA	30%
65 million sq. ft. of GFA	35%
84 million sq. ft. of GFA	40%
90 million sq. ft. of GFA	43%
96 million sq. ft. of GFA	45%
105 million sq. ft. of GFA	48%
113 million sq. ft. of GFA	50%

- (v) Summary of Existing Development. The trip reduction goals outlined above are predicated on the achievement of specific development levels within the Tysons Corner Urban Center as anticipated in the Comprehensive Plan. Prior to undertaking trip measurements, the TDM Program Manager (described in Paragraph E below) shall, in consultation with the County, provide a summary of the then existing development levels in Tysons Corner (based on RUPs and Non-RUPS issued) in order to determine the appropriate vehicle trip reduction goal.
- (vi) Subsequent Goal Reductions. If through an amendment to the Comprehensive Plan, the Board of Supervisors should subsequently adopt a goal for trip reductions that is lower than that committed to in this Proffer, then the provisions of this Proffer shall be adjusted accordingly without requiring a PCA.
- (vii) TDM Program Components. The TDM Program shall include, but not necessarily be limited to, the following components, each of which is more fully described in the TDM Plan:
- TDM Program Management.
 - TDM Program Branding.
 - Program Web Site.
 - Promotion of Real Time Transit Information.
 - Transportation Access Guide.
 - Pedestrian/Bicycle Accommodations.

- g. Transportation Fair
 - h. Live/work/play marketing
 - i. Carsharing Placement and Services
 - j. Parking Management.
 - k. Business Center
 - l. Try Transit Campaign
- (viii) Transportation Demand Management for Non-Residential Uses. Certain components of the TDM Plan will benefit the potential Non-Residential uses on the Property. The TPM shall make available information on those components to any Non-Residential uses on the Property. Such uses shall not be subject to monitoring nor will remedies and penalties be assessed against those uses.
- (ix) Process of Implementation. The TDM Program shall be implemented as follows, provided that modifications, revisions, and supplements to the implementation process as set forth herein as coordinated with FCDOT can be made without requiring a PCA.
- a. TDM Program Manager. The Applicant shall appoint and continuously employ, or cause to be employed, a TDM Program Manager (TPM) for the Property. The TPM shall be appointed by the Applicant no later than sixty (60) days after the issuance of the first building permit for the first new building to be constructed on the Property. The TPM duties may be part of other duties associated with the appointee. The Applicant shall notify FCDOT and the District Supervisor in writing within 10 days of the initial appointment of the TPM. Thereafter the Applicant shall do the same within ten (10) days of any change in such appointment.
 - b. Annual Report and Budget. The TPM shall prepare and submit to FCDOT an initial TDM Work Plan ("TDMWP") and Annual Budget no later than 180 days after issuance of the first building permit for the new building on the Property. Every calendar year thereafter but no later than August 1st, the TPM shall submit an Annual Report, which may revise the Annual Budget in order to incorporate any new construction on the Property. The Annual Report shall include, at a minimum:
 - 1) Details as to the components of the TDM program that will be put into action that year;

- 2) Any revisions to the budget needed to implement the program for the coming calendar year;
- 3) A summary of existing development levels in the Tysons Corner Urban Center, as well as those specific to the Tysons North Central District;
- 4) A determination of the applicable Maximum Trips After Reduction for the Property;
- 5) Provision of the specific details associated with the monitoring and reporting requirements of the TDM program in accordance with the TDM plan; and
- 6) Submission of the results of any Person Surveys and Vehicular Traffic Counts conducted on the Property in conjunction with each year's Annual Report.

The Annual Report and Budget shall be reviewed by FCDOT. If FCDOT has not responded with any comments within sixty (60) days after submission, then the Annual Report and Budget shall be deemed approved and the program elements shall be implemented. If FCDOT responds with comments on the Annual Report and Budget, then the TPM will meet with FCDOT staff within fifteen (15) days of receipt of the County's comments. Thereafter, but in any event, no later than thirty (30) days after the meeting, the TPM shall submit such revisions to the program and/or budget as discussed and agreed to with FCDOT and begin implementation of the approved program and fund the approved TDM Budget. Thereafter, the TPM shall update the Annual Report and TDM Budget for each succeeding calendar year, modify or enhance program elements and establish a budget to cover the costs of implementation of the program for such year. The expected annual amounts of the TDM Budget are further described in the TDM Plan.

- c. TDM Account. The Applicant through the TPM, shall establish a separate interest bearing account with a bank or other financial institution qualified to do business in Virginia (the "TDM Account") within 30 days after approval of the initial TDMWP and TDM Budget. All interest earned on the principal shall remain in the TDM Account and shall be used by the TPM for TDM purposes. The TDM Account shall be funded by the Applicant, through the TPM. The TDM Account shall not be eliminated as a line item in the governing budget and that funds in the TDM Account shall not be utilized for purposes other than to fund TDM

strategies/programs and/or specific infrastructure needs as may be approved in consultation with FCDOT.

Funding of the TDM Account shall be in accordance with the budget for the TDM Program elements to be implemented in the following year. In no event shall the TDM Budget exceed \$70,100 (this amount shall be adjusted annually in accordance with Proffer 53). The TPM shall provide written documentation to FCDOT demonstrating the establishment of the TDM Account within ten (10) days of its establishment. The TDM Account shall be replenished annually thereafter following the establishment of each year's TDM Budget. The TDM Account shall be managed by the TPM.

- d. TDM Remedy Fund. At the same time the TPM creates and funds the TDM Account, the TPM shall establish a separate interest bearing account (referred to as the "TDM Remedy Fund") with a bank or other financial institution qualified to do business in Virginia. Funding of the TDM Remedy Fund shall be made one time on a building by building basis at the rate of \$0.30 per gross square foot of new residential uses on the Property. Funding shall be provided by the Applicant prior to the issuance of the first initial RUP for the new building. This amount shall be adjusted annually in accordance with Proffer 53. Funds from the TDM Remedy Fund shall be drawn upon only for purposes of immediate need for TDM funding and may be drawn on prior to any TDM Budget adjustments as may be required.
- e. TDM Incentive Fund. The "TDM Incentive Fund" is an account into which the Applicant, through the TPM, shall deposit contributions to fund a multimodal incentive program for initial purchasers/lessees within the Property. Such contributions shall be at the rate of \$0.02 per gross square foot of new residential uses to be constructed on the Property and provided prior to the issuance of the first RUP for the proposed building.
- f. TDM Penalty Fund. The "TDM Penalty Fund" is an account into which the TPM shall deposit penalty payments as may be required to be paid pursuant to this Proffer for non-attainment of trip reduction goals. The County may withdraw funds from the TDM Penalty Fund for the implementation of additional TDM Program elements/incentives and/or congestion management associated with the Tysons North Central District, or for other TDM-related improvements or programs within Tysons Corner. To secure the Applicant's obligations to make payments into the TDM Penalty Fund, the TPM shall provide the County with a letter of credit or a

cash escrow as further described below. Prior to the issuance of the first RUP or for the new building on the Property, the TPM shall:

- 1) Establish the TDM Penalty Fund, if not previously established by the TPM, and/or
- 2) Deliver to the County a clean, irrevocable letter of credit issued by a banking institution approved by the County or escrow cash in an interest-bearing account with an escrow agent acceptable to DPWES to secure the Applicant's obligations to make payments into the TDM Penalty Fund (the "Letter of Credit or Cash Escrow"). The Letter of Credit or Cash Escrow shall be issued in an amount equal to \$0.05 for each square foot of new residential GFA shown on the approved site plan for the Property. Until the Letter of Credit or Cash Escrow has been posted, the figures in the preceding sentence shall be adjusted annually in accordance with Proffer 53. Once the Letter of Credit or Cash Escrow has been posted, there shall be no further adjustments or increases in the amount thereof. The Letter of Credit or Cash Escrow shall name the County as the beneficiary and shall permit partial draws or a full draw. The foregoing stated amount of the Letter of Credit or Cash Escrow shall be reduced by the sum of any and all previous draws under the Letter of Credit or Cash Escrow and payments by the TPM into the TDM Penalty Fund as provided below.

- g. Monitoring. The TPM shall verify that the proffered trip reduction goals are being met through the completion of Person Surveys, Vehicular Traffic Counts of residential uses and/or other such methods as may be reviewed and approved by FCDOT. The results of such Person Surveys and Vehicular Traffic Counts shall be provided to FCDOT as part of the Annual Reporting process. Person Surveys and Vehicular Traffic Counts shall be conducted for the Property beginning one year following issuance of the final initial RUP for the new building to be constructed on the Property. Person Surveys shall be conducted every three (3) years and Vehicular Traffic Counts shall be collected annually until the results of three consecutive annual traffic counts show that the applicable trip reduction goals for the Property have been met. At such time and notwithstanding the provisions below, Person Surveys and Vehicular Traffic Counts shall thereafter be provided every five (5) years. Notwithstanding the aforementioned, at any

time FCDOT may suspend such Vehicle Traffic Counts or Person Surveys if conditions warrant.

h. Remedies and Penalties.

1) Pre-Stabilization. If the Maximum Trips After Reduction for the Property is exceeded as evidenced by the Vehicular Traffic Counts outlined above, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and annual TDMWP.

a) Such remedial measures shall be funded by the Remedy Fund, as may be necessary, and based on the expenditure program that follows:

<u>Maximum Trips Exceeded</u>	<u>Expenditure</u>
Up to 1%	No Remedy needed
1.1% to 3%	1% of Remedy fund
3.1% to 6%	2% of Remedy Fund
6.1% to 10%	4% of Remedy Fund
Over 10%	8% of Remedy Fund

b) If the results of the traffic counts conducted during Pre-Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table below, then a portion of the Remedy Fund as outlined in the same table below shall be released back to the building owners through the TPM. The amount released will be relative to the amount contributed by those buildings constructed and occupied at the time Vehicular Traffic Counts. Any funds remaining in the Remedy Fund after such release will be carried over to the next consecutive three (3) year period.

Up to 65,000,000 Square Feet of GFA in Tysons		65-84,000,000 Square Feet of GFA in Tysons		84-90,000,000 Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned
0% - 4.9%	30%	0.0% - 4.9%	50%	0.0% - 4.9%	65%
5% - 10%	50%	5% - 10%	65%	5% - 8%	80%
10.1% - 15%	65%	10.1% - 13%	80%	8.1% - 10%	90%
15.1% - 18%	80%	13.1% - 15%	90%	>10%	100%
18.1 - 20%	90%	>15%	100%		
>20%	100%				
90-96,000,000 Square Feet of GFA in Tysons		96-113,000,000 Square Feet of GFA in Tysons		113,000,000+ Square Feet of GFA in Tysons	
Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned	Meet or Exceed Trip Goal for 3 years by:	Cumulative % Remedy Fund Returned
0.0% - 4.9%	80%	0.0% - 4.9%	90%	> 0.0%	100%
5% - 8%	90%	5%	100%		
>8%	100%				

- c) There is no requirement to replenish the TDM Remedy Fund at any time. Any cash left in the Remedy Fund will be released to the TPM for final distribution to the Applicant/Owner once three consecutive annual Traffic Counts conducted upon Stabilization show that the trip reduction goals have been met.

2) Upon Stabilization.

- a) If the TDM Program monitoring, as evidenced by the Vehicular Traffic Counts outlined above, reveals that the Maximum Trips After Reduction for

the Property is exceeded, then the TPM shall meet and coordinate with FCDOT to address, develop and implement such remedial measures as may be identified in the TDM Plan and annual TDMWP and funded by the Remedy Fund (if available) as may be necessary, commensurate with the extent of deviation from the Maximum Trips After Reduction goal as set forth in accordance with the expenditure schedule outlined above.

- b) If the results of the traffic counts conducted upon Stabilization show that the trip reduction goals have been met site-wide for three (3) consecutive years in accordance with the goals outlined on the table above, then any remaining Remedy Funds shall be released back to the building owners through the TPM.
- c) If despite the implementation of remedial efforts, the applicable Maximum Trips After Reduction (based on the existing development levels in the Tysons Corner Urban Center as described in Paragraph (iv) above) are still exceeded after three consecutive years, then, in addition to addressing further remedial measures as set forth in this Proffer, the TPM shall be assessed a penalty according to the following:

Exceeded Trip Goals	Penalty
Less than 1%	No Penalty Due
1% to 3%	5% of Penalty Fund
3.1% to 6%	10% of Penalty Fund
6.1% to 10%	15% of Penalty Fund
Over 10%	20% of Penalty Fund

- d) The Applicants through the TPM shall make the payments required by this Proffer into the TDM Penalty Fund upon written demand by the County, and the County shall be authorized to withdraw the amounts on deposit in the TDM Penalty Fund. If the Applicants fail to make the required penalty payment to the TDM Penalty Fund within thirty (30) days after written demand, the County shall have the ability to withdraw the penalty amount directly from the Letter(s) of Credit or Cash Escrow(s).

- e) The maximum amount of penalties associated with the Property, and the maximum amount the Applicants shall ever be required to pay pursuant to the penalty provisions of this Proffer, including prior to and after Stabilization, shall not in the aggregate exceed the amount of the Letter(s) of Credit or Cash Escrow(s) determined and computed pursuant to the provisions of the above proffer. There is no requirement to replenish the TDM Penalty Fund at any time. The Letter(s) of Credit and/or any cash left in the Cash Escrow(s) (either Penalty and/or Remedy Funds) shall be released to the TPM once three consecutive counts conducted upon Stabilization show that the Maximum Trips After Reduction have not been exceeded.
- i. Additional Trip Counts. If an Annual Report indicates that a change has occurred that is significant enough to reasonably call into question whether the applicable vehicle trip reduction goals are continuing to be met, then FCDOT may require the TPM to conduct additional Trip Counts (pursuant to the methodology set forth in the TDM Plan) within 90 days to determine whether in fact such objectives are being met. If any such Vehicular Traffic Counts demonstrate that the applicable vehicle trip reduction goals are not being met, then the TPM shall meet with FCDOT to review the TDM strategies in place and to develop modifications to the TDM Plan to address the surplus of trips.
- j. Review of Trip Reduction Goals. At any time and concurrent with remedial actions and/or the payment of penalties as outlined in this Proffer, the TPM may request that FCDOT review the vehicle trip reduction goals established for the Property and set a revised lower goal for the Property consistent with the results of such Person Surveys and Vehicular Traffic Counts provided for by this Proffer. In the event a revised lower goal is established for the Property, the Maximum Trips After Reduction shall be revised accordingly for the subsequent review period without the need for a PCA.
- k. Continuing Implementation. The Applicants through the TPM shall bear sole responsibility for continuing implementation of the TDM Program and compliance with this Proffer. The TPM shall continue to administer the TDM Program in the ordinary course in accordance with this Proffer including submission of Annual Reports.

- l. Notice to Owners. All owners of the Property shall be advised of the TDM Program set forth in this Proffer. The then current owner shall advise all successor owners and/or developers of their funding obligations pursuant to the requirements of this Proffer prior to purchase and the requirements of the TDM Program, including the annual contribution to the TDM Program (as provided herein), shall be included in all initial and subsequent purchase documents.
- m. Enforcement. If the TPM fails to timely submit a report to FCDOT as required by this Proffer, the TPM will have sixty (60) days within which to cure such violation. If after such sixty (60) day period the TPM has not submitted the delinquent report, then the Applicants shall be subject to a penalty of \$100.00 per day not to exceed \$36,500.00 for any one incident. Such penalty shall be payable to Fairfax County to be used for transit, transportation, or congestion management improvements within the vicinity of the Property.

AFFORDABLE/WORKFORCE HOUSING

41. Affordable Dwelling Units. If required by the provisions of Part 8 of Article 2 of the Ordinance, Affordable Dwelling Units ("ADUs") shall be provided pursuant to said regulations unless modified by the ADU Advisory Board.
42. Workforce Dwelling Units. In addition to any ADUs that may be required pursuant to this Proffer, the Applicant shall also provide for-sale and/or rental housing units on the Property in accordance with the Board of Supervisors' Tysons Corner Urban Center Workforce Dwelling Unit Administrative Policy Guidelines dated June 22, 2010. Workforce Dwelling Units ("WDUs") shall be provided such that the total number of ADUs, if any, plus the total number of WDUs results in not less than twenty percent (20%) of the total residential units constructed as part of the Proposed Development; with any units created with bonus floor area excluded from the 20% WDU calculation. If ADUs are provided in the development, both the ADUs and the ADU bonus units shall be deducted from the total number of dwelling units on which the WDU calculation is based.

The WDUs generated by the residential building on the Property shall be provided within said building. A minimum of ten percent (10%) of the dwelling units designated as ADUs and WDUs shall be designed and constructed with Universal Design features, as determined by the Applicant. The WDUs shall have a bedroom mix similar to that provided in the market rate units. Additionally, in the event that parking spaces are guaranteed to be made available for lease to individual market rate dwelling units, at least one (1) parking space shall be made available for lease by each ADU and/or WDU in the development.

Notwithstanding the foregoing, the Applicant reserves the right to enter into a separate binding written agreement with the appropriate Fairfax County agency as to the terms and conditions of the administration of the WDUs following approval of this Application. Such an agreement shall be on terms mutually acceptable to both the Applicant and Fairfax County and may occur after the approval of this Application. Neither the Board of Supervisors nor Fairfax County shall be obligated to execute such an agreement. If such an agreement is executed by all applicable parties, then the WDUs shall be administered solely in accordance with such an agreement and the provisions of this Proffer as it applies to WDUs shall become null and void. Such an agreement and any modifications thereto shall be recorded in the land records of Fairfax County.

PARKS AND RECREATIONAL FACILITIES

43. Publicly Accessible Park Space.

- A. The Applicant shall provide park space on the Property and off-site on adjacent properties that will be open and accessible to the public as depicted on the CDP/FDP. While these park spaces will be retained in private ownership, the Applicant shall record public access easement(s) ensuring that the park space(s) are open to the public for periods of time consistent with traditional Fairfax County parks and providing for perpetual private maintenance. The public access easements shall also reserve to the Applicants the right to reasonably restrict access for limited times for special events, security, maintenance and repairs and/or safety purposes.

Three public park spaces shall be provided as follows:

- (i) A park space of approximately 0.77 acres shall be provided on the Property between Street B and the western property line. Park features shall include an open lawn panel, fountain and fountain stream, a naturalized play hill with stepping stumps and slide, wooden decking around the Red Oak Tree, paths, benches, lighting and landscaping as depicted on Sheets L1.01, L1.02 and L2.03 of the CDP/FDP, as may be adjusted/refined at the time of site plan approval.
- (ii) A park space of approximately 0.66 acre shall be provided off-site on property identified on the 2014 Fairfax County tax maps as 29-4 ((7)) 11A, immediately adjacent and connected to the on-site park described in Paragraph (i) above. Park features shall include a fenced dog park, benches, and supplemental landscaping as depicted on Sheets L1.01 and L1.02, as may be adjusted/refined at the time of site plan approval. Development of this park space will require the filling of an existing pond. In filling the pond, the Applicant shall comply with the requirements of the PFM as it relates to on-site storm drainage, adequate outfall and stormwater management as determined at the time of final site plan. As an alternative, the Applicant reserves the right to not fill in the pond and

instead construct the alternate park plan with outdoor fitness equipment as generally shown on Sheet L1.02 of the CDP/FDP.

- (iii) A linear park space of approximately 0.12 acre shall be provided off-site on property identified on the 2014 Fairfax County tax maps as 29-4 ((7)) 8. This park space will include a concrete pedestrian path a minimum of five (5) feet in width, trees, benches and lighting and will provide a connection between Street C and Westpark Drive as depicted on Sheets L1.01 and L1.02, as may be adjusted/refined at the time of site plan approval.

- B. Adjustments to the designs and specific details with regard to recreational facilities, park furnishings and finishes may be made at the time of site plan approval, provided such adjustments and details are in substantial conformance with the quality and character of that shown on the CDP/FDP.
- C. A wayfinding and signage system shall be developed in coordination with the County at the time of site plan approval and installed by the Applicant to ensure the public can easily identify and access the publicly accessible park spaces.
- D. Prior to the issuance of a building permit for the residential building on the Property, a site plan for the three publicly accessible park spaces described in Paragraph A above, shall be approved and bonded. Construction of the three publicly accessible park spaces shall occur concurrently with development of the residential building and shall be substantially complete and available for public use as soon as possible.
- E. It is anticipated that the park space provided will be the first phase of a larger neighborhood park that will be constructed by others with the future redevelopment on adjacent parcels (the "Future Expanded Park"). As such, it is likely that some of the park facilities and amenities described in these Proffers will be altered in the future to make space available for other park facilities including an athletic field. Such alterations may be approved with a FDPA on the Property without the necessity of a PCA or CDPA.

44. Amenities and Facilities for Residents. The Applicant shall provide on-site recreational facilities for the future residents of the Property. Pursuant to Paragraph 2 of Section 6-508 and Paragraph 2 of Section 16-404 of the Ordinance regarding developed recreational facilities, the Applicant shall expend a minimum of \$1700.00 per market-rate and workforce residential unit on such recreation facilities. Prior to final bond release for the Property, the balance of any funds not expended on-site, as determined by DPWES shall be contributed to the Fairfax County Park Authority for the provision of recreation facilities serving Tysons Corner.

The specific facilities and amenities to be provided shall be determined at the time of site plan approval. Amenities to be provided may include, but not be limited to:

- A. Private exterior recreational areas/courtyards with seating areas, walking paths, specialty landscaping, lawn areas, hardscape areas, passive recreation areas, and swimming pools;
 - B. Clubroom for community gatherings; and
 - C. Fitness center with exercise equipment such as stationary bikes, treadmills, weight machines, free weights, etc. and/or sports courts.
45. Athletic Field Contribution. The Applicant shall contribute to the future development of an athletic field on the Future Expanded Park or the acquisition and development of athletic fields elsewhere serving the Tysons area by establishing an interest-bearing account referred to herein as the "Athletic Field Fund" and making a contribution in accordance with one of the following two options:
- A. The Applicant may contribute \$1.81 per square foot for the maximum approved GFA on the Property to the Athletic Field Fund on or before June 30, 2015. Such contribution made prior to June 30, 2015 shall not be subject to adjustment as described in Proffer 53.
 - B. The Applicant may contribute \$2.38 for each square foot of actual GFA constructed on the Property at the time of issuance of the first RUP or Non-RUP for the new building. This contribution shall be subject to adjustment as described in Proffer 53.

Upon thirty (30) day written notice from Fairfax County, the Applicant shall release the funds in the Athletic Field Fund, including any accrued interest, to Fairfax County or its designee for use in the acquisition, design and construction of athletic fields serving the Tysons area.

Should the Applicant or its affiliate be the party in the future that dedicates additional land for the athletic field and constructs said field on the Future Expanded Park (or elsewhere as may be determined with a future rezoning application), the Applicant or its affiliate shall be entitled to a credit for the amount contributed pursuant to Paragraph A above toward the development of the athletic field, or a return of the contributed amount, including any accrued interest, pursuant to Paragraph B above for use in developing the athletic field.

PUBLIC FACILITIES

46. Public Space. The Applicant shall make available for use by Fairfax County or its designee for a period of ten (10) years starting August 28, 2015, space consisting of approximately 4,019 square feet of GFA within the existing office building on property identified on the 2014 Fairfax County tax maps as 29-4 ((7)) 7B. Said space shall be utilized by Fairfax County Fire Marshal Office for training, meetings, administrative activities and related uses, for community meeting space, and as a polling space (the "FMO Space"). Said space shall be provided at no cost to the County in keeping with the

stipulations found in the existing lease agreement between the County and the Applicant's affiliate for the FMO Space. Sixteen parking spaces for the FMO Space shall also be made available at no cost, six of which shall be reserved and marked exclusively for the tenant and ten shall be available to the tenant on a non-exclusive basis.

Should it be determined prior to the expiration of the lease that the FMO Space is no longer needed in this location, the space shall be provided for another public/community use. Public/community use of this space shall be limited to museums, art galleries/studios, educational facilities, cultural centers, indoor recreational activities, County or State offices, polling places or other uses mutually agreed upon by the Applicant and the County. Should the Applicant seek to redevelop the building in which the Public Space is located prior to the expiration of the lease, then the Applicant shall provide alternate comparable space and parking arrangements (as determined in concert with the County) in the North Central District of Tysons for the remainder of the lease period. The Applicant shall provide one year's advance notification of the Applicant's intent to provide alternate comparable space.

47. Public School Contribution. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, and revised July, 2006, the Applicant shall contribute \$10,825 per expected student (based on a ratio of 0.106 students per residential unit) to the Fairfax County School Board to be utilized for capital improvements and capacity enhancements to schools that any students generated by the Property will attend. Such contribution shall be made prior to the issuance of the first RUP for new building and shall be based on the actual number of dwelling units built in the building.

If, prior to site plan approval for the residential buildings, Fairfax County should modify, on a county-wide basis, the expected ratio of students per subject multi-family unit or the amount of the contribution per student, the amount of the contribution shall be modified to reflect the then current ratio and/or contribution. This contribution is not subject to the provisions of Proffer 53. If the County should decrease the ratio or contribution amount, the amount of the contribution shall be decreased to reflect the current ratio and/or contribution.

STORMWATER MANAGEMENT

48. Stormwater Management.

- A. Stormwater Management ("SWM") measures for the Property shall be designed to protect receiving waters downstream of Tysons Corner by reducing runoff from impervious surfaces using a progressive approach. This progressive approach shall, to the maximum extent practicable, subject to the determination of the Department of Public Works and Environmental Services (DPWES), retain on-site and/or reuse the first inch of rainfall. Proposed SWM and Best Management Practice ("BMP") facilities shall follow a tiered approach as identified by the County which may include infiltration facilities (where applicable), rainwater harvesting/detention vaults, runoff reducing and other innovative BMPs.

Plans submitted subsequent to this rezoning shall identify the use of certain Low Impact Development ("LID") techniques that will aid in runoff volume reduction and promote reuse throughout the site. As a part of the LID techniques proposed, the Applicant shall provide green roofs both intensive and/or extensive, bio-retention (traditional and urban) areas, soil amendments, dry swales, pervious hardscapes/streetscapes, and infiltration.

Additionally, the SWM facilities shall be designed to accommodate not just the pre-developed (existing) peak release rates, but also strive to preserve and/or improve the pre-developed (existing) runoff volumes and reduce pollutant runoff as contemplated within the stormwater management-related credits of the project's registered version, or the most current version, of the U.S. Green Building Council's applicable Leadership in Environmental Education and Design (LEED®) rating system (e.g., for LEED-NC 2009, the Stormwater Design-Quantity Control and Stormwater Design-Quality Control credits [Sustainable Sites 6.1 and 6.2]). The above noted SWM Facilities shall be designed, to the maximum extent practicable, to meet the requirements of the stormwater management-related credits of the project's registered version or the most current version of the U. S. Green Building Council's applicable LEED rating system for each building/phase of the development based upon the LEED Boundary identified with each building/phase.

- B. At the time of a FDPA submission affecting stormwater management, the Applicant shall provide calculations showing the proposed volume reductions and shall work cooperatively with DPWES and DPZ to ensure that the stormwater management measures that would be sufficient to meet the requirements of the aforementioned LEED credits will be provided and that the first inch of rainfall will be retained or reused to the maximum extent practicable. Supporting information shall be included that is of sufficient detail, subject to determination by DPWES in coordination with the Environment and Development Review Branch of DPZ, to demonstrate the viability of the proposed stormwater management strategy for the area subject to the FDPA. This information shall include the following:
- (i) For any BMP involving infiltration of water into the ground, soil testing information documenting that the soil will be able to support the proposed infiltration measure(s); and
 - (ii) For any measure involving storage and reuse of stormwater runoff, documentation supporting assumed levels of water usage.
- C. The requirements of Paragraph B may be met on an individual FDPA basis or be based upon the total area of the Property. Extended detention facilities and extended release techniques may be used to augment the proposed volume reductions. It is further understood that interim or temporary SWM and BMP measures may be required during any interim phase of the Property.

The FDPA shall include the location and preliminary design of the SWM facilities including the access points to underground vaults. Access points, detailed at the time of FDPA, shall be located outside of the landscape amenity panel and sidewalk zone of the streetscape to the extent feasible.

- D. With each site plan submission, the Applicant shall provide refined calculations illustrating conformance with the proposed volume reductions shown on the CDP/FDP. The specific SWM facilities shall be determined at the time of site plan, and as may be approved by the DPWES. While it is anticipated that compliance with the goal of retaining and/or reusing the first inch of rainfall and meeting the requirements of the aforementioned LEED credits will be confirmed at site plan by utilizing the proposed retention credits identified by the County as part of its stormwater spreadsheet, the Applicant reserves the right to utilize any combination of LID measures (existing and future) to meet this goal, subject to the review and approval of DPWES. Similarly, if all other County suggested stormwater alternatives have been attempted, the Applicant reserves the right to over detain the runoff from a one-inch rainfall to a release rate that mimics that of a "good" forested condition.

Where it is the Applicant's intent to use a rainwater harvesting system ("RWHS") for stormwater credit, variations in reuse water demand may create fluctuations in draw down of the RWHS tank(s). If storage time will exceed 10 days, due to seasonal variation in demand, the Applicant shall have the right to discharge excess volumes off site during non-rainfall periods in a manner and at release rates as allowed by the PFM or as approved by the Director of DPWES. To the extent practicable, such discharges shall mimic release rates from a good forested condition for a significant majority of rainfall events, and/or excess volume shall be directed to other facilities using a "treatment train" approach, if possible, as approved by the Director of DPWES. If for any reason the designed dedicated end use(s) becomes unavailable because of some change, the Applicant shall provide an approved alternative end use or install a properly designed BMP treatment system to achieve runoff reduction and treatment of the runoff.

- E. As part of the development, the Applicant proposes the removal of an existing wet pond on adjacent Parcel 11A (referred to as Pond A) and the filling of the pond area for the creation of park space, as shown on Sheet C-6 of the CDP/FDP. The Applicant prepared and submitted a preliminary drainage study for the watershed draining to Pond C (located on property identified as 2014 Fairfax County Tax Map 29-2 ((15)) A8) for review and approval by Fairfax County during the FDP review process. Prior to the approval of a site plan that proposes filling in Pond A, a reach specific drainage study and channel adequacy analyses shall be performed for the reaches between Pond A and Pond C. This study shall confirm that the flows in the channel are lower than that identified in the preliminary drainage study. Further, if the channel outfall analyses indicate that the downstream drainage channel or Pond B (located on property identified as 2014 Fairfax County Tax Map 29-4 ((7)) C1, C2 and 11A) is inadequate or adversely

impacted by the removal of Pond A, a stream stabilization/restoration plan shall be submitted in accordance with the provisions of Chapter 124 of The Code and the Public Facilities Manual. The stream stabilization/restoration plan shall strive to use natural channel designs and avoid approaches such as armoring banks with rip-rap, concrete or using berms. The plan may also include vegetated buffers along parking lots adjacent to the channels downstream of Pond A and removal of existing concrete flumes that convey parking lot runoff into the channel. If the downstream drainage channel or Pond B is found to be inadequate or adversely impacted by the removal of Pond A, the approved stream stabilization/restoration plan shall be implemented concurrent with the filling of Pond A. As an alternative, the Applicant reserves the right to not fill in Pond A and instead construct the alternate park plan and facilities shown on Sheet L1.02 of the CDP/FDP.

49. Tree Replacement. As shown on the CDP/FDP, the Applicant is requesting a modification of PFM Section 12-0505.6B to allow for trees located above any proposed percolation trench or bio-retention area to count toward the 10-year tree canopy requirement. In the event that any of the said trees may need to be removed for maintenance or repair of those facilities, the Applicant shall replace removed trees as determined by the UFMD to sustain the 10-year canopy.

MISCELLANEOUS

50. Tree Preservation and Planting Fund Contribution. At the time of site plan approval for the new building on the Property, the Applicant shall make a one-time contribution of \$931.00 to the Fairfax County Tree Preservation and Planting Fund.
51. Metrorail Tax District Buyout for Certain Residential Uses. At least sixty days prior to recording any residential condominium documents that would change the use of all or any portion of the Property that either i) is zoned to permit multi-family residential use but is not yet used for that purpose or ii) from use as a multi-family residential real property that is primarily leased or rented to residential tenants or other occupants by an owner who is engaged in such a business, in either case therefore taxable for purposes of the now existing Phase I Dulles Rail Transportation Improvement District (the "Phase I District") to a use that is not subject to the Phase I District tax, the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicant intends to record such condominium documents for that portion of the Property. Prior to recording the condominium documents, the Applicant shall pay to Fairfax County a sum equal to the then-present value of Phase I District taxes estimated by the County to be lost as a result of that change in use.
52. Zoning Administrator Consideration. Notwithstanding the foregoing, upon demonstration that, despite diligent efforts or due to factors beyond the Applicant's control, proffered improvements such as, but not limited to, transportation, publicly-accessible park areas, athletic fields, trail connections, and offsite easements, have been delayed (due to, but not limited to, an inability to secure necessary permission for utility

relocations, VDOT approval for traffic signals, necessary easements and/or site plan approval) beyond the timeframes specified, the Zoning Administrator may agree to a later date for completion of these transportation improvement(s).

53. Adjustment in Contribution Amounts. All monetary contributions specified in these Proffers shall adjust on a yearly basis from the base year of 2015 and change effective each January 1 thereafter, based on changes in the Consumer Price Index for all urban consumers (not seasonally adjusted) ("CPI-U"), both as permitted by Virginia State Code Section 15.2-2303.3, except for contributions to the Tysons Grid of Streets Transportation Fund, the Tysons-wide Transportation Fund and public schools, which are subject to separate annual adjustments by the Board of Supervisors.
54. Advanced Density Credit. Advanced density credit is reserved consistent with the provisions of the Fairfax County Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT.
55. Severability. Pursuant to Section 18-204 of the Ordinance, any portion of the Property may be the subject of a proffered condition amendment ("PCA"), Special Exception ("SE"), Special Permit ("SP"), or Final Development Plan Amendment ("FDPA") without joinder and/or consent of the owners of the other portions of the Property, provided that such PCA, SE, SP or FDPA does not materially adversely affect the other phases. Previously approved zoning applications applicable to the balance of the Property that is not the subject of such a PCA, SE, SP or FDPA shall otherwise remain in full force and effect.
56. Successors and Assigns. These Proffers will bind and inure to the benefit of the Applicant and its successors and assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning and shall be binding upon Applicant's successor(s) in interest and/or the owners from time to time of any portion of the Property during the period of their ownership. Once portions of the Property are sold or otherwise transferred, the associated proffers become the obligation of the purchaser or other transferee and shall no longer be binding on the seller or other transferee. With respect to any portion of the Property subject to a COA, the COA shall have liability for performance of any applicable proffers, but not the individual condominium owners.
57. Counterparts. These Proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

[SIGNATURES BEGIN ON NEXT PAGE]

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APPLICANT/CONTRACT PURCHASER OF
TAX MAP 29-4 ((7)) 6, 7B PT.

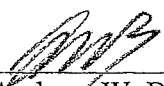
AMHERST PROPERTY, LLC, a Delaware limited liability
company

By: Amherst JV LLC, a Delaware limited liability
company, its sole member/manager

By: KF Amherst LLC, a Virginia limited liability company,
its managing member

By: Kettler Asset Management LLC, a Virginia limited
liability company, its manager

By: Kettler Inc., a Virginia corporation, its sole
member/manager



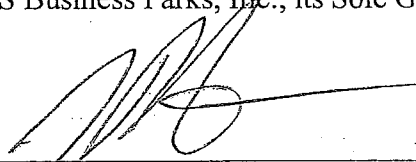
By: Andrew W. Buchanan
Its: President

[SIGNATURES CONTINUE ON NEXT PAGE]

TITLE OWNER OF
TAX MAP 29-4 ((7)) 6, 7B PT.

PS BUSINESS PARKS, L.P., a California Limited
Partnership

By: PS Business Parks, Inc., its Sole General Partner

A handwritten signature in black ink, appearing to read 'JP', is written over a horizontal line.

By: John W. Petersen
Its: Executive Vice President and COO

[SIGNATURES END]

